

SUPREME COURT OF WISCONSIN

CASE No. : 2007AP203

COMPLETE TITLE:

Michael S. Polsky, as receiver for
Communications Products Corporation,
Plaintiff-Respondent-Cross-Appellant,
v.
Daniel E. Virnich and Jack M. Moores,
Defendants-Appellants-Cross-
Respondents.

ON CERTIFICATION FROM THE COURT OF APPEALS

OPINION FILED: July 7, 2009
SUBMITTED ON BRIEFS:
ORAL ARGUMENT: January 7, 2009

SOURCE OF APPEAL:

COURT: Circuit
COUNTY: Grant
JUDGE: Michael Kirchman

JUSTICES:

CONCURRED:
DISSENTED:
NOT PARTICIPATING: ROGGENSACK, J., did not participate.

ATTORNEYS:

For the plaintiff-respondent-cross appellant there were briefs by *Robert J. Kasieta, Andrew J. Parrish*, and the *Kasieta Legal Group, LLC*, Madison, and oral argument by *Robert J. Kasieta*.

For the defendants-appellants-cross respondents there were briefs by *Donald K. Schott, Valerie L. Bailey-Rihn, James Richgels*, and *Quarles & Brady LLP*, Madison, and *Jeffrey O. Davis* and *Quarles & Brady LLP*, Milwaukee, and oral argument by *Donald K. Schott*.

An amicus curiae brief was filed (in the court of appeals) by *Thomas J. Arenz* and *Whyte Hirschboeck Dudek SC*, Milwaukee, on behalf of Risk Management Association.

An amicus curiae brief was filed by *John E. Knight, James E. Bartzen, Kirsten E. Spira*, and *Boardman, Suhr, Curry & Field LLP*, Madison, on behalf of the Wisconsin Bankers Association, and oral argument by *John E. Knight*.

An amicus curiae brief was filed by *William Haus and Haus, Roman and Banks, LLP*, Madison, on behalf of the Sheet Metal Workers International Local Union No. 565.

NOTICE

This opinion is subject to further editing and modification. The final version will appear in the bound volume of the official reports.

No. 2007AP203
(L.C. No. 2004CV285)

STATE OF WISCONSIN

:

IN SUPREME COURT

**Michael S. Polsky, as receiver for
Communications Products Corporation,**

Plaintiff-Respondent-Cross-Appellant,

v.

Daniel E. Virnich and Jack M. Moores,

**Defendants-Appellants-Cross-
Respondents.**

FILED

JUL 7, 2009

David R. Schanker
Clerk of Supreme Court

APPEAL from a judgment of the Circuit Court for Grant County, Michael Kirchman, Judge. *Certification vacated.*

¶1 PER CURIAM. The court is equally divided on whether to affirm or reverse the judgment of the circuit court. Chief Justice Shirley S. Abrahamson, Justice Ann Walsh Bradley, and Justice N. Patrick Crooks would affirm. Justice David T. Prosser, Jr., Justice Annette Kingsland Ziegler, and Justice Michael J. Gableman would reverse. Justice Patience Drake Roggensack did not participate.

¶2 When a certification or bypass results in a tie vote by this court, the better course of action is to vacate our decision to accept certification or bypass and remand the cause to the court of appeals. State v. Richard Knutson, Inc., 191 Wis. 2d 395, 396-97, 528 N.W.2d 430 (1995) (remanding to court of appeals on a tie vote on certification); State v. Elam, 195 Wis. 2d 683, 684-85, 538 N.W.2d 249 (1995) (restating rule but declining to remand to court of appeals on a tie vote on bypass because court of appeals had previously decided issue).

¶3 Accordingly, we vacate our order granting certification and remand to the court of appeals.

By the Court.—The order granting certification is vacated and the cause is remanded to the court of appeals.

